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ALEXANDER L. STEVAS
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No. 82-487

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM_____

NACHMAN STULBACH
Petitioner

-v-

UNITED STATES PATENT
AND TRADEMARK OFFICE
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

NACHMAN STULBACH
Petitioner

40 Brighton 1st Road
Brooklyn, N.Y. 11235

QUESTIONS PRESENTED FOR REVIEW

1. Whether each and every claim (5-11) of the same patent application (Serial No. 095,082, Date of filing 11.15,1979) should be required to contain reference to the "amplifier means", which are fully claimed for the entire vehicle (5) by claim 7, which is the fundamental feature of the vehicle's electrical self-sufficiency and as such forms an integral part of the entire vehicle of paternal claim 5 to which all the other claims, e.i. 6,7,9 and 10 refer unequivocally THROUGH THE IDENTICAL STARTING WORDS: " An electric vehicle as in claim 5 " of which all claims in the application, including claim 7 with the amplifier means, are a functional part.

Consequently, whether in light of

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the forgoing fact, claims 5,6,9 and 10 should be rejected, as alleged in the Opinion of the U.S. Court of Customs and Patent Appeals of May 13, 1982, page 1, because, as the Court decision states: "claims 5,6,9 and 10 contain no reference to such amplifier means" ?

2. Whether the rejection of claims 7 and 8 should be sustained by the Court of Customs and Patent Appeals "over Merville in view of Carini", as stated in the Court's decision of May 13, 1982, page 2 : "we can find no error in theBoard's sustaining the rejection of claims 7 and 8 under paragraph 103 over Merville in view of Carini", while the Court has in the same decision, on same page 2, invalidated the Carini reference by stating :

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clearly: "We are inclined to the appellant's view that one of ordinary skill would have been hard pressed to extract a "turn amplifier" from Carini", while the remaining Merville reference, which was used by the examiner only jointly to allegedly resemble the applicant's device, is now standing alone and is, especially without Carini, absolutely deprived of any "amplifier means" ?

3. Whether the applicant's claim 11 and the presented by it vehicle, introducing thereby a new electric car with the capacity of driving without the burden of constant battery charging and changing, a feature unparalleled in automobile history and structure which is not even remotely suggested

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in any of the cited references (as expressed in the separate opinion of Judge Miller in the CCPA decision of May 13,1982) should be alleged by the Court of Customs and Patent Appeals as being only a "design choice" and rejected ?

4. Whether the United States Patent and Trademark Office should have regarded the instant application as abandoned as of July 12, 1982, as it had advised the applicant in the Notice of abandoment of July 29,1982 and the following explanatory letter of August 19, 1982 (referring to the decision of the District Court, District of Columbia No. 3107 -67 of May 14, 1970) that this application is no longer considered pending.

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(Please see the documents of the above communication in the Appendix to this petition, pages 41 to 44).

Moreover, in light of the unequivocally prevailing United States Supreme Court Rules allowing the applicant 90 days from the date of denial of the petition for rehearing in the United States Court of Customs and Patent Appeals to appeal to the Highest Court of the Land (what in the case of this petitioner is 90 days from July 1, 1982) what effect will the issued Patent Office Notice of Abandonment have on the present application after the United States Supreme Court has decided on the lawfulness of its claims ?

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OPINION BELOW

The U.S. Court of Customs and Patent Appeals sustained the Board of Appeals rejection of claims 5-11 of the application Serial No. 095,082 (Filing Date 11.15,1979) by its decision of 5.13,1982 in the Appeal No. 82-536.

The same panel of judges of the U.S. Court of Customs and Patent Appeals has then denied the appellant's petition for rehearing, on July 1,1982.

JURISDICTIONAL STATEMENT

In light of the facts presented above this Court's jurisdiction is invoked persuant to Title 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Federal Constitution provides in pertinent part:

> Nor shall any person be deprived of life, liberty, or property without due process of law.

STATEMENT OF THE CASE

On November 15,1979 the original application with claims 1-4 was filed in the United States Patent and Trademark Office, and at a later date it was assigned the Serial Number 06/095,082. The Special Status on account of merits for Energy Conservation was granted to the applicant on May 16,1980.

On May 30,1980 the claims 1-4 were rejected and on August 8,198o the amended specification with new claims

5-11, was filed.

On 2.26,1981 claims 5-11 were finally rejected. On October 14,1981 the rejection of the claims was affirmed by the Board of Appeals (Appeal No. 486-64) and in January 1982 a petition of appeal was filed with U.S. Court of Customs and Patent Appeals (Case No. 82-536). The US Court of Customs and Patent Appeals sustained the Board's rejection on May 13,1982. The appellant filed then on 5.24,1982 the Petition for Rehearing, which was denied on July 1, 1982.

STATEMENT OF THE FACTS

The fundamental innovation of this application is based on the introduced new "electro-amplifier", which takes up practically no space in the car and enhances immensely the production of electrical power by the car itself, thus bringing into reality the batteryless driving.
The features of the "electro-amplifier" and its construction and benefits are outlined in detail in the specification and in the brief to the PTO Board of Appeals, and are in concise wording claimed in the claims 7 and 8.
The innovation also contributes to the reclamation of vast quantities of lost energy what is especially important because of the timely

STATEMENT OF THE FACTS

and urgent object to acquire energy from domestic resources.
The innovation will also strongly contribuée to bring the electric car swiftly into general use and thus enhance immensely the improvement of the atmospheric enviroment.

REASON FOR GRANTING THE WRIT

The U.S. Court of Customs and Patent Appeals has entered its decision in the Appeal No. 82-536 on May 13, 1982 sustaining the rejection of claims 5-11 of the patent application Serial No. 06/095,082 (Filing Date 11.15,1979).

In accordance with Rule 6.1 of the CCPA, which grants the appellant the right to state points of law

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and fact which the petitioner believes the judges have overlooked or misapprehended, the appellant has filed timely the petition for rehearing on 5.24,1982, which was denied on July 1, 1982 by the same panel of judges of the Court of Customs and Patent Appeals who entered the Court decision on May 13, 1982.

Since no reason for denial of the petition for rehearing, in which the appellant has pointed out and underscored very serious misapprehensions in the CCPA decision of May 13,1982, was given the petitioner has requested the CCPA Office of the Clerk to inform him about the actual reasons of the denial and in reply to the above request the petitioner

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has been advised that the Court does not usually give any reasons for denying the petition for rehearing.

CONCLUSION

In light of the forgoing reasons petitioner Nachman Stulbach respectfully requests that writ of certiorari be granted to review the decision of the U.S. Court of Customs and Patent Appeals of 5.13,1982 in the Appeal No. 82-536 in re Patent Application Serial No. 06/095,082, Filing Date 11.15,1979.

Respectfully submitted:

by: Nachman Stulbach

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